

Hearing Date: January 19, 2001
at 2:00 p.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re

RANDALL'S ISLAND FAMILY GOLF
CENTERS, INC., et al.

Debtors.

Chapter 11
Case Nos. 00 B 41065 (SMB)
through 00 B 41196 (SMB)

OPPOSITION OF CITY OF LOS ANGELES TO MOTION FOR ORDER
APPROVING CERTAIN BID AND ASSUMPTION AND ASSIGNMENT PROCEDURES

The City of Los Angeles, Department of Recreation and Parks (the "City") hereby opposes the motion for orders pursuant to Sections 105, 363, 365 and 1146 of the Bankruptcy Code and Bankruptcy Rules 2002,6004,6006 and 6007, *inter alia*, authorizing and approving assumption, sale and assignment of certain leasehold interests and approving related sales procedures filed by Randall's Island Family Golf Centers, Inc. and the related debtors (collectively, the "Debtors"). As grounds for its opposition, the City states as follows:

RELEVANT FACTS

1. The City and Encino/Balboa Family Golf Centers, Inc. ("Encino/Balboa Center") are parties to Concession Contract for the operation of a golf pro shop and driving range (the "Concession Contract").¹ The Concession Contract provides that the Debtor shall have the

¹ For the purpose of its motion, the Debtors have treated the Concession Contract as an unexpired lease of non-residential real property. The City neither admits nor denies by this opposition that the Concession Contract is a lease for non-residential property.

exclusive right for ten (10) years to use a golf shop and driving range for the sale of golf related equipment and for the operation of a golf driving range. In exchange for that right, the Debtor agreed to pay a base monthly fee of the greater of 1/12th of \$675,000 or a percentage of gross income. In addition to the base monthly fee of \$56,250.00, Encino/Balboa Center is obligated under the Concession Contract to pay a monthly utility fee of \$2000.

2. A central feature of the Concession Contract for the City and its residents is Encino/Balboa Center's covenant and promise to make capital improvements in an amount of not less than \$1,670,000 (the "Capital Improvements") within a set period of time. Encino/Balboa Center has defaulted under the Concession Contract. In addition to defaults for pre petition rent and for the month of December 2001, Encino/Balboa Center failed to make the Capital Improvements required by the Concession Contract.

3. The City opposed any extension of time for the Debtors to assume or reject leases and executory contracts in connection with the Debtors' last request. Rejection of the Concession Contract would permit the City to commence the process of finding an operator that will make the Capital Improvements and run the facility in the manner intended by the Concession Contract.

4. The Debtors have listed the Concession Contract and the Encino/Balboa Family Golf Center on their schedule of Leased Properties offered for assumption and assignment in accordance with the proposed procedures for the disposition of all their properties. However, the procedures applicable to typical leasehold interests are insufficient to protect the City's interests or meet the requirements of Section 365 because of the particular obligations undertaken by the Encino/Balboa Center in connection with the Concession Contract

5 . Specifically, the proposed procedures call for an auction to be held on February 6, 2001. To qualify, bidders must demonstrate generally the ability to perform under the applicable agreement to the Debtors' satisfaction. The Debtors propose to provide the landlords with the relevant financial information for each successful bidder within 48 hours of the completion of the auction. Then, the Debtors propose that the Court set an expedited hearing on February 9 to approve the assumption and assignment. Finally, the Debtors propose a hearing shortly thereafter concerning any disputes to the proposed assumption and assignment relating to cure amounts.

6 . As set forth in the motion and proposed order, the uniform bid procedures for qualification of bids and selection of the successful bidder do not take into account the specific performance requirements under the Concession Contract for the completion of the Capital Improvements within a certain time frame or the operational requirements in addition to the customary licensing fee obligations. Moreover, the expedited procedures do not afford the City the opportunity to assess the ability of any proposed acquirer to fulfill these obligations under the Concession Contract as required by Section 365 of the Code let alone to properly raise an objection to assumption and assignment of the Concession Contract by the selected acquirer on any grounds.

RELIEF REQUESTED

7. The City therefore requests that the procedures be modified to require that any potential bidder for the Concession Contract establish for the Debtors and the City its financial wherewithal and ability to undertake completion of the Capital Improvements within the time frame set forth in the Concession Contract as a condition of bidding. In addition, any bidder for the property must be able to demonstrate an ability to operate the facility as contemplated by the

Concession Contract. Finally, the City must be given an adequate opportunity to evaluate and raise objections, if necessary, to assignment of the Concession Contract to a successful bidder.

CONCLUSION

Wherefore the City respectfully requests the Court deny the Debtors motion with respect to the Concession Contract unless the procedures are modified as requested above and that the Court grant such other and further relief as the Court deems just and proper.

DATED: January 18, 2001
New York, New York

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CERTIFICATE OF SERVICE

I, CAROLE NEVILLE, declare that on January 18, 2001, I served a copy of the attached Opposition of City of Los Angeles To Motion For Order Extending The Time Within Which The Debtors-In-Possession Must Elect To Assume or Reject Their Unexpired Leases of Non-Residential Property By-Hand Upon The Parties on the attached list:

/s/ Carole Neville

Carole Neville

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